

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 02, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ESTATE OF KAREN THIEL, and
LAMAR THIEL, and the marital
community thereof,

Plaintiffs,

v.

ADAMS COUNTY PUBLIC
HOSPITAL DISTRICT #2, a
Washington Public Hospital District
doing business as East Adams Rural
Healthcare doing business as East
Adams Rural Hospital, and
MATTHEW MECHAM, an individual,

Defendants.

No. 2:21-cv-00279-SMJ

**ORDER REGARDING MOTION
TO DISMISS**

Before the Court, without oral argument, is Defendants' Motion for Partial Dismissal for Failure to State a Claim Pursuant to FRCP 12(b)(6), ECF No. 12. After review of the motion and the file, the Court grants the motion in part and denies it in part.

BACKGROUND

Prior to her death on September 29, 2021, Karen Thiel was a lewy body dementia patient who spent two stays at East Adams Rural Hospital's swing bed

1 facility in 2019, one beginning in January and ending in late February, and another
2 beginning in May and continuing until October. *See* ECF Nos. 5 at 3–6; 18 at 2.
3 According to Plaintiffs’ First Amended Complaint, Ms. Thiel’s communication
4 skills were limited during her stays at the Hospital due to her dementia, and she
5 required “specialized attention and assessment to receive the quality of care the
6 other patients routinely received.” ECF No. 5 at 2. The claims at issue here
7 principally concern the care Ms. Thiel received surrounding two falls she suffered
8 while at the Hospital, though Plaintiffs also allege deficient treatment for Ms.
9 Thiel’s ulcer.

10 **A. First Fall – January 29, 2019**

11 In the early morning of January 29, 2019, Ms. Thiel exhibited “a physical
12 need,” but Hospital staff “ignored that need and left her alone in her chair.” ECF
13 No. 5 at 3; *see also* ECF No. 18 at 2 (“[S]taff ignored clear signs that Karen Thiel
14 had a physical need, perhaps to move to the restroom or engage in some other
15 activity.”). As a result, “she attempted to stand up and suffered a fall,” breaking her
16 hip. ECF No. 5 at 3. Hospital nursing staff, including Matthew Mecham, knew of
17 the fall immediately after it occurred. *Id.* (“According to [Hospital] records,
18 Mecham heard Karen Thiel calling for help and heard her complaining about hip
19 pain.”).

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1 After Ms. Thiel fell, “staff did not properly examine [her] for injuries.” *Id.* at
2 4. Instead, staff “placed her back in her chair and undertook no other efforts to
3 provide the care she needed.” *Id.* No staff member entered the fall into Ms. Thiel’s
4 medical chart and staff “failed to inform other staff about the fall.” *Id.* Because of
5 these failures, the Hospital “moved Karen Thiel and attempted to have her walk on
6 her broken hip on multiple occasions before [] her injuries were detected.” *Id.* “Staff
7 members charted that they knew of no reason for her to be in pain.” *Id.*

8 A day or two after the fall, physical therapy staff discovered the injury when
9 they attempted to make Ms. Thiel walk. *Id.* The next day—approximately 36 hours
10 after he witnessed Ms. Thiel fall—Mr. Mecham updated Ms. Thiel’s chart,
11 “attempt[ing] to create a backdated record of the fall.” *Id.* at 4–5. As a result of her
12 injury, Ms. Thiel was sent to Spokane, Washington for surgery. *Id.* at 4. She later
13 returned for a second stay at the Hospital to recuperate. *Id.*

14 Plaintiffs allege, based upon information and belief, that Hospital staff,
15 including Mr. Mecham, treated Ms. Thiel differently than other Hospital patients
16 because she had dementia and a limited ability to communicate, meaning she was
17 unable to complain about neglect, mistreatment, pain, or other issues with the
18 quality of her care. *Id.* at 5.

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1 **B. Second Fall – August 29, 2019**

2 On the evening of August 29, 2019, Karen was left in the Hospital dining
3 area in the care of “Steve with environmental services,” who was not a licensed
4 medical provider. *Id.* Plaintiff alleges that other patients at EARH were not left in
5 the care of Steve. *Id.* at 6. Eventually, Steve also left the dining area, leaving Ms.
6 Thiel without any Hospital staff. *Id.* While alone, Ms. Thiel suffered a fall, causing
7 her pain, suffering, and emotional distress. *Id.*

8 **C. Pressure Ulcer**

9 Less relevant to the issues addressed in this Order, Plaintiffs also allege that
10 when Ms. Thiel was admitted to the Hospital in May of 2019, she had a pressure
11 ulcer. *Id.* Hospital staff allegedly breached the standard of care by treating the
12 wound improperly for more than three months without reassessing the treatment
13 strategy. *Id.* As a result, Ms. Thiel suffered delayed healing, increased pain and
14 suffering and other damages. *Id.*

15 **D. Complaint and Allegations**

16 Plaintiffs Lamar Thiel and the Estate of Karen Thiel bring four claims against
17 East Adams Rural Hospital and Matthew Mecham. *Id.* at 6–8. First, Plaintiffs bring
18 a medical negligence claim, alleging that the Hospital and its staff breached their
19 duty of care on multiple occasions by negligently providing care to Ms. Thiel,
20 resulting in “damages, including, but not limited to injuries, emotional distress and

1 pain and suffering.” *Id.* at 7. Second, Plaintiffs bring a claim against Mr. Mecham
 2 under 42 U.S.C. § 1983, alleging that Mr. Mecham, with no rational basis for doing
 3 so, “deprived Ms. Thiel of her constitutional rights by failing to document or inform
 4 other staff of her January 29, 2019 fall until many hours after it occurred . . . because
 5 [Ms.] Thiel is a dementia patient with limited ability to advocate for herself or
 6 inform others of her mistreatment.” *Id.*¹ Third, Plaintiffs bring a claim in ordinary
 7 negligence, alleging that the Hospital breached its duty of care on at least one
 8 occasion, causing Ms. Thiel to suffer damages, including but not limited to, pain
 9 and suffering. *Id.* at 8. Fourth, and finally, Plaintiffs sue for unlawful discrimination
 10 under the Washington Law Against Discrimination, alleging that Ms. Thiel received
 11 inferior care because she had dementia. *Id.* Defendant seek dismissal of Plaintiff’s
 12 Second, Third, and Fourth claims. ECF No. 12 at 1–2 (citing Fed. R. Civ. P. 12(b)(1)
 13 and 12(b)(6)).

14 **LEGAL STANDARD**

15 A complaint must contain “a short and plain statement of the claim showing
 16 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Under Federal Rule of

17
 18 ¹ Plaintiffs’ Second Claim, in the main, refers only to Mr. Mecham, but on one
 19 occasion refers to Mr. Mecham and the Hospital. ECF No. 5 at 7. Nevertheless, in
 20 Plaintiffs’ response to the motion to dismiss, Plaintiffs aver that the claim is brought
 against only Mr. Mecham, and so the Court will proceed as though he is the only
 defendant against whom Plaintiffs lodge a Section 1983 claim. *See* ECF No. 18 at
 9.

1 Civil Procedure 12(b)(6), the Court must dismiss the complaint if it “fail[s] to state
2 a claim upon which relief can be granted.”

3 In deciding a Rule 12(b)(6) motion, the Court construes the complaint in the
4 light most favorable to the plaintiff and draws all reasonable inferences in the
5 plaintiff’s favor. *Ass’n for L.A. Deputy Sheriffs v. County of Los Angeles*, 648 F.3d
6 986, 991 (9th Cir. 2011). Thus, the Court must accept as true all factual allegations
7 contained in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). But the
8 Court may disregard legal conclusions couched as factual allegations. *See id.*

9 To survive a Rule 12(b)(6) motion, the complaint must contain “*some* viable
10 legal theory” and provide “fair notice of what the claim is and the grounds upon
11 which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 562 (2007) (internal
12 quotation marks and ellipsis omitted). Thus, the complaint must contain “sufficient
13 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
14 face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Facial
15 plausibility exists where the complaint pleads facts permitting a reasonable
16 inference that the defendant is liable to the plaintiff for the misconduct alleged. *Id.*
17 Plausibility does not require probability but demands more than a mere possibility
18 of liability. *Id.* While the complaint need not contain detailed factual allegations,
19 threadbare recitals of a cause of action’s elements, supported only by conclusory
20 statements, do not suffice. *Id.* Whether the complaint states a facially plausible

1 claim for relief is a context-specific inquiry requiring the Court to draw from its
2 judicial experience and common sense. *Id.* at 679.

3 DISCUSSION

4 A. Plaintiff's Equal Protection Claim under Section 1983

5 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely
6 provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v.*
7 *Connor*, 490 U.S. 386, 393–94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137,
8 144 n.3 (1979)). To state a claim under Section 1983, a plaintiff must allege that (1)
9 the defendant acted under color of state law and (2) the defendant deprived him or
10 her of rights secured by the Constitution or federal law. *Long v. County of Los*
11 *Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). A person deprives another of a
12 constitutional right, “within the meaning of § 1983, ‘if he does an affirmative act,
13 participates in another’s affirmative act, or omits to perform an act which he is
14 legally required to do that causes the deprivation of which complaint is made.’”
15 *Preschooler II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007)
16 (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal
17 connection may be established when an official sets in motion a ‘series of acts by
18 others which the actor knows or reasonably should know would cause others to
19 inflict’ constitutional harms.” *Preschooler II*, 479 F.3d at 1183 (quoting *Johnson*,
20 588 F.2d at 743). This standard of causation “closely resembles the standard

1 ‘foreseeability’ formulation of proximate cause.” *Arnold v. Int’l Bus. Mach. Corp.*,
2 637 F.2d 1350, 1355 (9th Cir. 1981); *see also Harper v. City of Los Angeles*, 533
3 F.3d 1010, 1026 (9th Cir. 2008).

4 “The Equal Protection Clause of the Fourteenth Amendment commands that
5 no State shall ‘deny to any person within its jurisdiction the equal protection of the
6 laws,’ which is essentially a direction that all persons similarly situated should be
7 treated alike.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985)
8 (quoting *Plyler v. Dow*, 457 U.S. 202, 216 (1982)). There are two recognized
9 theories on which Plaintiffs can successfully claim an equal protection violation.
10 First, Plaintiffs may establish that Defendants intentionally discriminated against
11 her based on her membership in a protected class. *Lee v. City of Los Angeles*, 250
12 F.3d 668, 686 (9th Cir. 2001). Second, Plaintiffs may establish that Ms. Thiel was
13 intentionally treated differently than similarly situated individuals without a rational
14 relationship to a legitimate state purpose, commonly referred to as a “class of one
15 claim.” *Engquist v. Oregon Dep’t of Agric.*, 553 U.S. 591, 601–02 (2008); *Village*
16 *of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

17 Although claims such as Plaintiffs’, which do not specify which theory they
18 are proceedings on, could arguably be analyzed under either or both theories,
19 Plaintiffs clarified in their response brief that they seek to bring a “class of one”
20

1 claim. ECF No. 18 at 6–8. As such, the Court evaluates the claim under that theory
2 alone.

3 Here, Plaintiffs allege that Mr. Mecham, an employee of a state hospital,
4 treated Ms. Thiel differently than the other patients by failing to document or inform
5 other staff of her January 29, 2019 fall. ECF No. 5 at 7. Plaintiffs further allege that
6 Mr. Mecham had no rational basis to treat Ms. Thiel differently in this way, but
7 instead did so because of her medical condition. *Id.* As such, Plaintiffs have
8 plausibly alleged sufficient facts to make out a class of one equal protection claim.

9 **B. Plaintiffs’ State Law Claims for Ordinary Negligence and Unlawful**
10 **Discrimination**

11 Under RCW 7.70.10, the state of Washington, exercising its police and
12 sovereign power, “preempted ‘all civil actions and causes of action, whether based
13 on tort, contract, or otherwise, for damages for injury occurring as a result of health
14 care.’” *Reed v. ANM Health Care*, 225 P.3d 1012, 1014 (quoting RCW 7.70.010).

15 Plaintiffs seeking damages for injuries occurring as a result of health care must
16 therefore bring a medical malpractice suit limited to three theories of liability:

- 17 (1) That injury resulted from the failure of a health care provider to follow
18 the accepted standard of care; (2) That a health care provider promised the
19 patient or his or her representative that the injury suffered would not occur;
20 (3) That injury resulted from health care to which the patient or his or her
representative did not consent.

1 RCW 7.70.030(1)–(3). Defendant argues that Plaintiffs’ state law claims for
2 ordinary negligence and unlawful discrimination must be dismissed because
3 “Plaintiffs’ claims are medical negligence claims which fall under RCW 7.70”. ECF
4 No. 12 at 15.

5 Plaintiffs’ main defense in opposition to dismissal of these counts is that the
6 allegations in Claims 3 and 4 do not concern injury occurring *as a result of health*
7 *care*. ECF No. 18 at 10–16. Instead, Plaintiffs argue, the claims concern at least
8 some “injuries [that] were not the result of a medical professional ‘utilizing the
9 skills’ of their profession in ‘diagnosing treating or caring for’ a patient,” but instead
10 alleges that Hospital staff left Ms. Thiel “*alone* ‘in the care of “Steve with
11 environmental services” who was not a properly licensed caregiver,’ and that Steve
12 and [the Hospital] owed Karen Thiel an ordinary duty of care.” *Id.* at 12.

13 In support, Plaintiffs point to an unpublished Washington Court of Appeals
14 decision, *Kipfer v. Providence Health & Servs. – Washington*, No. 81155-0-1, 2021
15 WL 164706 at *2 (Jan. 19, 2021) (unpublished). In *Kipfer*, the Washington Court
16 of Appeals held that the plaintiff’s claims were not ones of medical nature because
17 her injury occurred prior to the anticipated blood draw and instead stemmed from
18 the fact that she was asked to sit in a swivel chair. *Id.* As such, “the claim was in
19 the nature of premises liability negligence, not health care professional negligence.”
20 *Id.*

1 But Plaintiffs' claims here are not ones in the nature of premises liability, and
2 *Kipfer* is otherwise inapposite. Even construing the allegations in Plaintiffs' First
3 Amended Complaint in their favor, the foundation of their claims is that, because
4 Ms. Thiel had dementia, a critical aspect of her care was to provide her with the
5 requisite care of someone with her condition, including but not limited to recording
6 her conditions and injuries, and not leaving her unaccompanied or else not
7 neglecting her when she showed signs of needing to get up. *See* ECF No. 5 at 3–6.
8 This is precisely the kind of claim subsumed into RCW 7.70, and Plaintiffs cannot
9 circumvent the consequences of that provision simply by alleging that Defendants
10 negligently *failed* to provide care. Nor, for that matter, can they circumvent the
11 statute by claiming for the first time in their response that the negligence was
12 Steve's, as Plaintiffs have not sufficiently alleged that Steve, who is a custodian at
13 the Hospital but not a named defendant in this matter, had any duty to stay and care
14 for Ms. Thiel when she was in the dining area.

15 Plaintiffs' claims for ordinary negligence and unlawful discrimination are
16 claims for damages "occurring as a result of health care," as that term is used in
17 RCW 7.70.10. Given this, the claims fall under RCW 7.70 and can only be brought
18 as medical negligence claims on the three theories set out in 7.70.030(1)–(3).
19 Accordingly, these claims are dismissed with prejudice.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 **1.** Defendants' Motion for Partial Dismissal for Failure to State a Claim
3 Pursuant to FRCP 12(b)(6), **ECF No. 12**, is **DENIED IN PART AND**
4 **GRANTED IN PART.**

5 **A.** Plaintiffs' claims for ordinary negligence and unlawful
6 discrimination are **DISMISSED WITH PREJUDICE.** *See*
7 ECF No. 5 at 8. To the extent Plaintiffs allege a Section 1983
8 claim against the Hospital, that claim is **DISMISSED**
9 **WITHOUT PREJUDICE.** Only Plaintiffs' claim for medical
10 negligence and Plaintiffs' claim under Section 1983 against Mr.
11 Mechem remain.

12 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
13 provide copies to all counsel.

14 **DATED** this 2nd day of May 2022.

15 

16 SALVADOR MENDOZA, JR.
17 United States District Judge
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